

Hand-Delivered

FILED
CHARLOTTE, NC

UNITED STATES DISTRICT COURT

JUN 10 2024

for the

WESTERN District of NORTH CAROLINA

US DISTRICT COURT
WESTERN DISTRICT OF NC

CHARLOTTE Division

Case No. 3:24-cv-544-GCM

(to be filled in by the Clerk's Office)

Kenneth Wayne Tolbert

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

GARRY L. MCFADDEN, ELISA CHINN-
GARY, DONALD J. CHRETON

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names. Do not include addresses here.)

Jury Trial: (check one) ☒ Yes ☐ No

COMPLAINT FOR VIOLATION OF CIVIL RIGHTS

(Non-Prisoner Complaint)

NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Except as noted in this form, plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

In order for your complaint to be filed, it must be accompanied by the filing fee or an application to proceed in forma pauperis.

I. The Parties to This Complaint**A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name Kenneth Wayne Tolbert
 Address 2433 Booker Avenue
Charlotte NC 28216
City State Zip Code
 County MECKLENBURG
 Telephone Number (704) 820-2673
 E-Mail Address claimyournationality@gmail.com

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (if known) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

Defendant No. 1

Name Garry L. McFadden
 Job or Title (if known) MECKLENBURG COUNTY SHERIFF
 Address 700 East Fourth Street
Charlotte NC 28202
City State Zip Code
 County MECKLENBURG
 Telephone Number (704) 336-2543
 E-Mail Address (if known) garry.mcfadden@mecklenburgcountync.gov
☐ Individual capacity ☒ Official capacity

Defendant No. 2

Name Elisa Chinn-Gary
 Job or Title (if known) Clerk of Superior Court
 Address 832 East Fourth Street, Suite 3600
Charlotte NC 28202
City State Zip Code
 County MECKLENBURG
 Telephone Number (704) 686-0420
 E-Mail Address (if known) _____
☐ Individual capacity ☒ Official capacity

Defendant No. 3

Name

Donald J. Cureton

Job or Title (if known)

Superior Court Judge

Address

832 East Fourth Street

Charlotte

NC

28202

City

State

Zip Code

County

MECKLENBURG 26th Judicial District

Telephone Number

N/A

E-Mail Address (if known)

donald.j.cureton2@nccourts.org

☐

Individual capacity

☒

Official capacity

Defendant No. 4

Name

N/A

Job or Title (if known)

Address

City

State

Zip Code

County

Telephone Number

E-Mail Address (if known)

☐

Individual capacity

☐

Official capacity

II. Basis for Jurisdiction

Under 42 U.S.C. § 1983, you may sue state or local officials for the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against (check all that apply):

☐Federal officials (a *Bivens* claim)☒

State or local officials (a § 1983 claim)

B. Section 1983 allows claims alleging the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials?

- violation of appeal time & rights (rule 62(a)) / conspiracy against property rights
- issuing & executing void original writs
- violation of 10 day period pursuant to N.C.G.S. 1-310 / Extortion / right to full trial
- violation of issue pursuant to N.C.G.S. 1-307 / conversion / misrepresentation
- procedural & substantial due process violations / excessive fines, costs
- pursuant to CLARK v. HELLEN 23 N.C. 421

C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is/are being violated by federal officials?

N/A

- D. Section 1983 allows defendants to be found liable only when they have acted "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia." 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed.

Defendant Larry L. McFadden acting under through not limited to: Chapter 17 E of the North Carolina General Statutes. Defendant Elisa Chinn-Larry acting under N.C.G.S. 7A-103 "Authority of Clerk of Superior Court, or Defendant Donald J. Curston acting under through not limited to: Chapter 7A "Judicial Department" At all times material to this lawsuit, all defendants have acted under color

III. Statement of Claim

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

- A. Where did the events giving rise to your claim(s) occur?

MECKLENBURG COUNTY SHERIFF'S OFFICE & COURTHOUSE

- B. What date and approximate time did the events giving rise to your claim(s) occur?

04/26/2024, 05/06/2024, 05/07/2024, 05/02/2024, 5/22/2024, 6/05/2024

- C. What are the facts underlying your claim(s)? (For example: What happened to you? Who did what? Was anyone else involved? Who else saw what happened?)

Original amended order requires Plaintiff to pay 19,975.00 to stay execution of possession. On 4/24/2024 an order for partial summary judgment was granted to defendants without discovery and filed in the Mecklenburg County Court. Order granted possession of 2433 (Plaintiff's residence) although was amended and filed on May 8th in the Mecklenburg County Court. A writ of possession was issued on 04/26/2024 directly to the Mecklenburg Co. Sheriff's Office without the clerk of court. An eviction date was scheduled for 05/06/2024 and the sheriff's eviction notice was mailed to Plaintiff by defendant's attorney & not the Sheriff. Sheriff's eviction/execution was purportedly returned unexecuted on 05/07/2024 "upon request of the plaintiff" however, no document of this return was filed by Mecklenburg county clerk of court. Plaintiff even filed a temporary restraining order on that same writ of possession & it went unanswered & uninvestigated. Defendants through attorney have now secured another writ of possession based on the May 8th amended judgment/order. Writ was issued 05/22/2024 & received by Sheriff 06/05/2024 to be executed 06/12/2024.

IV. Injuries

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive.

No physical related injuries other than infliction of emotional distress. Have not been to hospital yet although plasma donation records show a serious weight loss fluctuation during times mentioned in complaint.

V. Relief

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

Plaintiff requests court to moot state court process subject to this complaint for cause of lack of authentication (court seal) as well as any writs issuing therefrom and to enjoin any decisions, judgments, orders, writs, etc. that have been previously issued therefrom. Plaintiff requests damages in the amount of \$ 2,850,000.00 dollars in order to be made whole.

Basis for these claims are as follows:

- | | | |
|---|---|-----|
| - Breach of public trust (oath of office) | \$50,000.00 per breach | X 2 |
| - Conspiracy against property rights | \$150,000.00 per person per conspiracy | X 3 |
| - Exaction of money or other property | \$100,000.00 per person involved | X 3 |
| - Intimidation | \$100,000.00 | X 2 |
| - Maintenance | \$ 100 1,000,000.00 per occurrence | X 2 |

VI. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

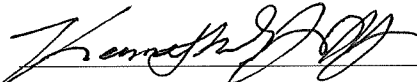
A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: 06/10/2024

Signature of Plaintiff

Printed Name of Plaintiff


Kenneth Wayne Tolbert

B. For Attorneys

Date of signing: _____

Signature of Attorney

Printed Name of Attorney

Bar Number

Name of Law Firm

Address

City

State

Zip Code

Telephone Number

E-mail Address